

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/590,489	COHEN, MARC S.	
	<b>Examiner</b> Charles Chow	<b>Art Unit</b>	
		2685	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10/26/2005.
2. ☒ The allowed claim(s) is/are 1-23.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                       |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|   | 9. <input type="checkbox"/> Other _____.  |

## Detailed Action

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment has been given from attorney in a telephone interview with Steven Fallon on December 5, 2005.

Attorney has authorized examiner to amend following claims.

IN THE CLAIMS: Please amend claims 1, 7, 14, 21-23 as indicated by the **underlined & strikethrough** in below:

Claim 1. (Currently amended) A wireless messaging method for use with recorded digital audio media played in digital audio media players, the method comprising steps of: providing a promotional, informational or instructional message broadcast to digital audio media players; then, within a digital audio media player, receiving promotional, informational or instructional messages as a result of said step of providing, storing received promotional, informational or instructional messages within the digital audio media player; and playing a stored promotional, informational or instructional message according to a message play plan in response to a playback operation of the digital audio media on the digital audio media player .

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Claim 7. (Original) The method according to claim 1, wherein said step of playing includes  
a steps of forming a the message play plan to determine how many messages should be  
played from memory in response to a playback operation.

Claim 14. (Previously amended) A wireless messaging promotion method for use with  
recorded digital audio media played in digital audio media players, the method  
comprising steps of:  
arranging distribution of portable digital audio media players capable of playing  
digital audio media, receiving promotional, informational or instructional messages from  
a wireless broadcast, storing received promotional, informational or instructional  
messages in a digital audio media player, and playing a stored promotional,  
informational or instructional message according to a message play plan in response to  
a playback operation of the digital audio media on the digital audio media player to a  
target group of people;  
providing a promotional, informational or instructional message broadcast to digital audio  
media players distributed in said step of distributing.

Claim 21. (Currently amended) A wireless message receiving and playing digital audio  
media player comprising:  
a digital audio medium module which plays digital audio media;  
a wireless receiver module which receives promotional, informational or instructional  
messages from a wireless broadcast, stores received promotional, informational or  
instructional messages, and outputs stored promotional, informational or instructional  
messages according to a message play plan in response to a playback operation of the

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digital audio media by the digital audio medium module;

an audio output which produces audio in response to playing of digital audio media or outputting of promotional, informational or instructional messages from memory;

an interface to interface the audio output to the digital audio medium module and the wireless receiver module.

Claim 22. (Currently amended) A messaging method for use with recorded digital audio media played in digital audio media players, the method comprising steps of: loading, by ~~pre-loading or~~ receiving from a wireless broadcast, promotional, informational or instructional messages into memory of digital audio media players; then, within a digital audio media player, storing promotional, informational or instructional messages received from said step of loading within the digital audio media player; and playing a stored promotional, informational or instructional message according to a message play plan in response to a playback operation of the digital audio media on the digital audio media player.

Claim 23. (New) The method according to claim 22, wherein said playback operation is a track end and ~~said step of playing includes the~~ message play plan selects ~~selecting a~~ promotional, informational or instructional message from memory based upon a track title.

### **Allowable Subject Matter**

2. The following is an examiner's statement of reasons for allowance:

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Claims 1-23 are allowable over the prior art of record. The prior arts fail to teach singly, particularly, or in combination, as concluded in the Pre-Appeal Brief Review.

Applicant has amended the independent claims with the allowable features for the within a digital audio media player, receiving, wirelessly, promotional, informational or instructional messages, storing received promotional, informational or instructional message within the digital audio media player; playing a stored promotional, informational or instructional message according to a message play plan MPP in response to a playback operation of the digital audio media on the digital audio media player, for the received, memory stored, wireless messages instructional, promotional messages, to playing back on the portable digital audio media player. The dependent claims are also allowable due to their dependency upon the independent claims and having the additional claimed features.

The closest prior art to **Hazenfield (US 5,991,374)** teaches the remote playing back of pre-stored music on the CD disc of the CD player via activated by the wirelessly transmitted playlist [ abstract, Fig. 1, col. 2, lines 54-64; col. 3, lines 49-65], but fail to teach the within a digital audio media player, receiving, wirelessly, promotional, informational or instructional messages, storing received promotional, informational or instructional message within the digital audio media player; playing a stored promotional, informational or instructional message according to a message play plan MPP in response to a playback operation of the digital audio media on the digital audio media player.

**Hunter et al. (US 6,647,417 B1)** teaches the receiving satellite music sample to be stored on hard drive disk, for user preview, to select music to be played by purchasing [abstract, Fig. 1-2, Fig. 10, col. 3, lines 40-65; col. 13, line 54 to col. 14, lines 36], but fail to teach the within a digital audio media player, playing a stored promotional, informational or

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instructional message according to a message play plan MPP in response to a playback operation of the digital audio media on the digital audio media player.

Other prior arts in below has been considered, but they fail to teach the above allowable claim features.

**Benyamin et al. (US 6,721,489 B1)** teaches in Fig. 12, a processor playing audio, if the message was at the end of track then causes the music player to play from next track [Fig. 12, col. 1, line 37 to col. 2, line 13].

**Robbins (US 6,728,167 B1)** teaches the CD player for playing music interspersed with commercial messages and the random playback play list [col. 7, lines 31-37].

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### **Conclusion**

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles C. Chow whose telephone number is (571) 272-7889. The examiner can normally be reached on 8:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

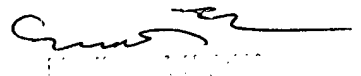
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information

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about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Charles Chow C.C.

December 6, 2005.



Charles Chow